

1 TRAINOR FAIRBROOK  
JOHN D. FAIRBROOK (SBN 105115)  
2 980 Fulton Avenue  
Sacramento, California 95825  
3 Telephone: (916) 929-7000  
Facsimile: (916) 929-7111  
4 kvp:3807001.934520.1

5 LAW OFFICES OF WHITNEY F. WASHBURN  
WHITNEY F. WASHBURN (SBN 106461)  
6 1 Natoma Street  
Folsom, California 95630  
7 Telephone: (916) 353-2800  
Facsimile: (916) 353-2797

8 Attorneys for Plaintiffs  
9 FLAGSHIP WEST, LLC, MARVIN G. REICHE  
and KATHLEEN REICHE

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA (FRESNO)  
12

13 FLAGSHIP WEST, LLC, a California  
14 limited liability company, MARVIN G.  
REICHE, and KATHLEEN REICHE,

15 Plaintiffs,

16 v.

17 EXCEL REALTY PARTNERS, L.P., a  
18 Delaware limited partnership, NEW  
19 PLAN EXCEL REALTY TRUST, INC.,  
a Maryland corporation, THE MONEY  
20 STORE COMMERCIAL MORTGAGE,  
INC., a corporation, FIRST UNION  
21 SMALL BUSINESS CAPITAL, a North  
Carolina corporation, and DOES 1  
through 50, inclusive,

22 Defendants.  
23

Case No. CIV. F-02-5200 REC DLB

**JUDGMENT**

Trial Date: November 20, 2003  
Action Filed: February 21, 2002  
Judge: Honorable Oliver W. Wanger

On December 3, 2003, a jury returned verdicts in favor of Plaintiffs, awarding Plaintiffs \$1,480,740 in contract damages. Plaintiffs then elected the remedy of rescission. Following post-judgment proceedings, judgment was entered on December 14, 2006, and amended June 15, 2007, which judgment was appealed to the United States Court of Appeals for the Ninth Circuit. On July 2, 2009, the Court of Appeal vacated the June 15, 2007, judgment, after which it remanded the matter to this court. Following proceedings on remand, this Court issued its Memorandum Decision and Order Granting Plaintiffs' Motion for Interpretation of Lease and Denying Defendant's Motion to Strike and/or For Leave to File Sur-Reply Brief, its Memorandum Decision and Order Re Defendant's Motion to Strike and Plaintiff's Request for Entry of Judgment of Rescission and for Prejudgment Interest; and its Memorandum of Decision and Order regarding Defendants' Motion to Reconsider Decision and Order dated July 5, 2011.

#### JUDGMENT IS ENTERED AS FOLLOWS:

1. The Ground Lease ("Lease") entered into between Plaintiffs and Defendant, EXCEL REALTY PARTNERS L.P., (attached as Exhibit B to Plaintiffs' Second Amended Complaint), signed by the individual Plaintiffs as guarantors in their individual capacities to pay rent and perform all covenants, is rescinded from its date of execution, and such Lease shall have no further force and effect, as if all Plaintiffs and Defendants had not entered into and executed the Lease;

2. Plaintiffs FLAGSHIP WEST, LLC, MARVIN G. REICHE, and KATHLEEN REICHE, and each of them, are awarded \$ 2,134,430 for damages in rescission and consequential damages resulting from Defendants' breach of contract following application of credits due Defendants, plus pre-judgment interest on \$214,350, at the rate of \$58.73 per day, from and after April 27, 2001 through the date of judgment in the amount of \$233,716.68, and therefore shall recover from Defendants EXCEL REALTY PARTNERS, L.P. and NEW PLAN EXCEL REALTY TRUST, INC., jointly and severally, a total judgment of \$2,358,146.68;

3. Plaintiffs shall recover their costs as allowed by law upon filing of a Cost Bill as provided in Rule 54-292 of this Court;

1           4. Any motion for attorney's fees shall be filed within 28 days of the date of entry of  
2 this judgment as provided in Local Rule 54-293 of this Court.  
3

4  
5  
6 IT IS SO ORDERED.  
7

8 Dated: September 28, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TRINOR FAIRBROOK  
Attorneys At Law  
980 Fulton Avenue  
SACRAMENTO, CALIFORNIA 95825  
Telephone: (916) 929-7000  
Facsimile: (916) 929-7111